IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.905 OF 2019

Prothious Engineering Services Private Limited … Petitioner
V/s.
The Deputy Commissioner of Income Tax
Circle 10(3)(2) and ors. … Respondents

Mr.Jehangir Mistri, Senior Counsel with Mr.Arijit Chakravarty with Mr.Abhishek Tilak for the Petitioner.
Mr.Akhileshwar Sharma for Respondent Nos.1 to 3.

CORAM : AKIL KURESHI AND
SARANG V. KOTWAL, JJ.
DATE : APRIL 12, 2019.

P.C.:-

1. The petitioner has challenged the condition imposed by the revenue authorities for staying the disputed tax and interest demand arising out of the order of assessment pending appeal before the Commissioner (Appeals). The Assessing Officer insists that the petitioner must deposit 20% of such amount within a short time, subject to which the rest of the demand would be kept in abeyance. Having heard learned counsel for the parties broadly the picture that emerges is that the assessment order in the present case pertaining to the said assessment year 2016-17 is closely linked with the assessments of the petitioner for the

assessment year 2009-10 to assessment year 2014-15. In such cases, the Assessing Officer had made transfer pricing adjustments. The orders were challenged before the Appellate Commissioner and thereafter. The assessee's appeals are pending before the Income Tax Appellate Tribunal. We note that previously the Tribunal had heard such appeals, but the appeals could not be disposed of. Pursuant to an order dated 22nd March, 2019 passed by us in this petition, the Tribunal has passed an order dated 29th March, 2019 (as at annexure "P" to the petition) providing an interim formula to enable the petitioner to enjoy stay against the recoveries in relation to the appeals pending before the Tribunal. This formula provides as under:

> "7. In view of the above, we grant the stay of balance demand and fix this appeal for AY 2014-15 on 23.04.2019 along with the other appeals for and from AY 2009-10 to 2013-14, which are already fixed for hearing on this very date. The stay of balance demand of 90% is granted on the following conditions:-
> a) The assessee shall deposit 5% of the outstanding demand of Rs.4,48,35,279/- on or before 31.03.2019 and next 5% shall deposit on or before 30.04.2019.
> b) This stay will continue fro 180 days from today or till the disposal of appeal, whichever is earlier.
> c) The assessee consented that the refund

> arising out of the processing of return for AY 2017-18 amounting to Rs.21,22,236/- can be adjusted against this demand and for this learned Counsel for the assessee made statement at bar. The Revenue will adjust this refund.
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> d) The assessee will not seek any adjournment on the fixed date of hearing except in exceptional circumstance and in case assessee want to file paper book, he shall file one week prior to the date of hearing."

2. We are informed that the Tribunal suggests the appeals are likely to proceed for final hearing before the Tribunal on 23rd April, 2019. In the present petition, the case of the petitioner is that the outcome of said appeal before the Tribunal would virtually decide the petitioner's appeals before Appellate Commissioner for the assessment year 2016-17. According to the petitioner, entire additions made by the Assessing Officer in the present case are on account of the petitioner not being able to carry forward the past losses for the current year. In other words, according to the petitioner, if petitioner succeeds in the appeal before the Tribunal, it would get full relief in the pending appeal before the Commissioner for the present assessment year 2016-17.

3. We also note that by virtue of the deposit made by the petitioner towards disputed taxes demand for the said assessment year 2009-10 to 2014-15 so far and which may be further made pursuant to the interim directions of the Tribunal, the petitioner would have discharged approximately 15% disputed tax and interest liability. We are informed that the petitioner company is in financial hardship.

4. Considering totality of facts and circumstances of the case, we require the petitioner to deposit 5% of the disputed tax of the present year in two equal installments latest by 31st May 2019 and 30th June, 2019. Subject to this condition being fulfilled, there should be no further recovery of tax and interest from the petitioner till the disposal of the appeal by the Appellate Commissioner. Petition disposed of accordingly. The impugned order dated 22nd March, 2019 passed by the Principal Commissioner of Income Tax would therefore not survive.

(SARANG V.KOTWAL,J.) **(AKIL KURESHI,J.)**